

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

IN RE: CITY OF DETROIT, . Docket No. 13-53846  
MICHIGAN, .  
 . Detroit, Michigan  
 . October 8, 2013  
Debtor. . 9:00 a.m.  
 . . . . .

EVIDENTIARY HEARING RE. AMENDED MOTION OF CREDITOR  
DEBORAH RYAN, AN INTERESTED PARTY, FOR RELIEF FROM  
THIS COURT'S ORDER STAYING PROCEEDINGS  
BEFORE THE HONORABLE STEVEN W. RHODES  
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

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1 THE CLERK: All rise. Court is in session. Please  
2 be seated. Case Number 13-53846, City of Detroit, Michigan.

3 THE COURT: Good morning. Appearances, please.

4 MR. CARLSON: Good morning, your Honor. Eric  
5 Carlson from Miller Canfield on behalf of the City of  
6 Detroit.

7 MR. GOODMAN: William Goodman appearing with my  
8 partner, Julie Hurwitz, on behalf of Deborah Ryan.

9 MR. FUSCO: Timothy Fusco, Miller Canfield, on  
10 behalf of the City of Detroit.

11 MS. PATEK: Your Honor, Barbara Patek on behalf of  
12 the Police Lieutenants & Sergeants Association and the Police  
13 Command Officers Association.

14 THE COURT: Okay. Thank you. Can we go straight to  
15 our testimony and waive further opening arguments?

16 MR. CARLSON: That's fine with the city, your Honor.

17 MR. GOODMAN: Okay.

18 THE COURT: Okay. Let's do that then.

19 MR. CARLSON: Good morning, your Honor. Again, for  
20 the record, Eric Carlson, Miller Canfield, on behalf of the  
21 City of Detroit. I would like to call as the city's witness  
22 Mr. Edward Keelean.

23 THE COURT: What's the last name, sir?

24 MR. CARLSON: Keelean.

25 THE COURT: All right. Step forward, please, sir.

1 Before you take your seat, please raise your right hand.

2 EDWARD KEELEAN, DEBTOR'S WITNESS, SWORN

3 THE COURT: Please sit down right there. And you  
4 may proceed.

5 MR. CARLSON: Thank you, your Honor.

6 DIRECT EXAMINATION

7 BY MR. CARLSON:

8 Q Good morning, Mr. Keelean.

9 A Good morning.

10 Q Could you please state your full name for the record?

11 A Full name is Edward Victor Keelean.

12 Q And could you describe for the Court your educational  
13 background, please?

14 A I have four years in the U.S. Navy, a high school degree,  
15 four years -- graduate of CMU, and three years of law school  
16 at Wayne State University graduating in 1978.

17 Q Thank you. And your Bar admissions?

18 A I was admitted to the Bar in November of 1978. I'm  
19 admitted to the Federal Bar here and the Sixth Circuit Bar,  
20 Wayne County, City of Detroit, et cetera, et cetera.

21 Q Okay. And your place of employment currently?

22 A I am currently employed as the deputy corporation counsel  
23 for the City of Detroit Law Department.

24 Q And so your official title is again?

25 A Deputy corporation counsel.

1 Q And have you held any other positions at the city in the  
2 past?

3 A I started out with the city in November 2001 as a senior  
4 assistant corporation counsel. I was selected as the deputy  
5 corporation counsel in February of 2009. From January the  
6 8th until July the 1st of this year, I was the acting  
7 corporation counsel at the point in time when we had no  
8 appointed corporation counsel, and I'm still deputy  
9 corporation counsel today as I sit here.

10 Q Thank you.

11 MR. CARLSON: Your Honor, the city has a proposed  
12 exhibit. May I approach the witness?

13 THE COURT: Yes.

14 BY MR. CARLSON:

15 Q Mr. Keelean, do you recognize this document?

16 A I do.

17 Q Was it prepared at your direction?

18 A It was.

19 Q Can you describe what it is, please?

20 A It is an organization chart dated August 27th, 2013,  
21 which sets forth in the various rectangles on the chart the  
22 organization of the City of Detroit Law Department. It has  
23 the practice areas along with the supervisors of every  
24 practice area. It has the individuals by name and their  
25 capacities. It also has rectangles for the various vacancies

1 that we have. I believe there are 96 rectangles on this  
2 chart of which there are actual persons in 82 of those  
3 rectangles.

4 Q Thank you.

5 MR. CARLSON: Your Honor, at this time I'd move to  
6 have this admitted as City Exhibit A.

7 THE COURT: Any objections?

8 MR. GOODMAN: No objection, your Honor.

9 MR. CARLSON: May I approach?

10 THE COURT: It is admitted.

11 (Exhibit A received at 9:04 a.m.)

12 BY MR. CARLSON:

13 Q Looking back at the chart, Mr. Keelean, approximately how  
14 many attorneys are represented on that chart as employees and  
15 attorneys for the City of Detroit?

16 A At present there are 50 attorneys. I've numbered them  
17 just to be sure. We have a budget for 58, but only 50 are  
18 actually filled at the present time.

19 Q So just to clarify, it's your testimony that you're not  
20 fully staffed at this point?

21 A Correct.

22 Q Okay. Has the understaffing of the city law department  
23 affected the city's ability to handle its caseload in the  
24 past?

25 A Absolutely.

1 Q What steps does the city take to deal with overload of  
2 caseload?

3 A Well, over the last two years principally we've lost a  
4 host of senior litigators and senior attorneys, so we have  
5 made every effort to add new people, which has been very  
6 cumbersome, very slow, and very -- of limited success, and  
7 also to reallocate the resources among the various portions  
8 of our organization into the high-intensity areas, which are  
9 litigation traditionally, and beginning in December and  
10 January, most recently, we were forced to seek outside  
11 counsel to handle several high-profile, high-impact, high-  
12 risk cases because we just didn't have the senior staff in-  
13 house to take care of them.

14 Q Thank you. So turning now -- looking at the chart, can  
15 you -- let's talk about your position within this department.  
16 The chart represents, as you described earlier, I believe,  
17 eight different divisions. Is that correct?

18 A Well, seven practicing law divisions, and then the  
19 financial management unit is a staff support function.  
20 That's the one almost directly under the corporation  
21 counsels.

22 Q Okay. And you oversee, based on this chart, all of those  
23 divisions?

24 A I do, along with the corporation counsel.

25 Q What type of oversight does that entail?

1 A Every aspect of the practice of the city law department.  
2 I mean there is nothing that doesn't cross our desks  
3 eventually, although obviously we have some quality people in  
4 the supervisory ranks that take care of the day-to-day  
5 mundane stuff, but ultimately the decisions that need to get  
6 made come to either Portia Roberson, the current corporation  
7 counsel, or me or both.

8 Q Okay. So in your position as deputy corporate counsel,  
9 are you obligated to maintain familiarity with the cases  
10 being handled by your subordinates?

11 A Absolutely, but as a -- on a level of detail that's not  
12 nearly as informed as the individuals handling the cases.

13 Q So you would be familiar generally with tort cases, for  
14 instance?

15 A Yes.

16 Q Okay. As represented by the chart, maybe you can  
17 describe for the Court out of the 50 attorneys or so that you  
18 described previously, how many of those attorneys fall within  
19 tort litigation divisions?

20 A Essentially, the two branches to the right of the  
21 chart -- there's one segment that's entitled "litigation,"  
22 which is supervised by Krystal Crittendon, and then there's  
23 another branch to the right of that, which is C&T, which  
24 stands for commercial and tort litigation, supervised by Jim  
25 Nosedá, and we had to combine that branch, commercial and



1 tort, in order to serve the demands of our caseload and the  
2 diminishing number of senior staff, so Mike Muller, for  
3 example, who's representing the city in the case we're  
4 talking about today, is in the commercial and tort litigation  
5 team. At sometime prior -- a couple years ago, I think -- he  
6 was under the litigation branch but moved over for reasons  
7 that I won't go into, but it was basically trying to  
8 reallocate resources. However, with the number of people  
9 we've lost, Mike had to step up and do a lot more of the tort  
10 litigation than he had done for the 12 months prior.

11 Q So just to clarify, how many are -- how many attorneys  
12 specifically are litigation or tort --

13 A I think I counted yesterday the supervisors are expected  
14 to maintain about a half of their activity as managing of  
15 cases, so you count the two of them together as one. I think  
16 it ends up being about 17 or 18 litigators.

17 Q Okay.

18 A However, I encompassed in there some of the labor and  
19 employment litigation, which there's about four or five over  
20 there, so 12 or 13 if you want to talk about tort litigation  
21 truly.

22 Q So out of the 17 or 18 you described, are there varying  
23 levels of abilities?

24 A Oh, absolutely, and it's -- we have some excellent  
25 assistant corporation counsels, which are generally the entry

1 level and the less experienced. We have some excellent  
2 ACC's. However, the senior ACC's, such as Mr. Muller, are  
3 ones that have been around the block enough times and have a  
4 higher level of familiarity with the type of cases that we're  
5 talking about today and are experienced enough to manage a  
6 very demanding litigation.

7 Q We're here today on a motion filed by Deborah Ryan  
8 seeking relief from stay based upon a case that Ms. Ryan  
9 filed against the City of Detroit. Are you familiar with  
10 that case?

11 A I am.

12 Q Can you describe for me your understanding with respect  
13 to the issues and the overall complexity of that case?

14 A It is what we call generally a Section 1983 litigation  
15 based on alleged violations of the Constitution by the City  
16 of Detroit and by Canton Township based on a very tragic  
17 event in Canton where two Detroit police officers were caught  
18 up in a murder suicide, and the claims by the plaintiffs  
19 involve gross negligence claims under state law and also  
20 violations of the U.S. Constitution based on equal protection  
21 and the like, so it's -- it is a extremely difficult case for  
22 a lot of reasons, and it demands a lot of activity and a lot  
23 of attention. That's why we've assigned it to one of our  
24 senior -- most senior litigators.

25 Q So you described previously out of the 17 or 18

1 litigators, there's varying degrees of ability. How many  
2 litigators would you say, in your position as the responsible  
3 person for these staff members, would have the capability or  
4 the experience that the city would give them this level of  
5 case?

6 A At the risk of offending some of my colleagues, I would  
7 suggest that Mr. Muller, Mr. Gaabo, Mr. Ashford would be the  
8 three go-to people for cases of this type. Mr. Bailey could  
9 handle it as well if pressed into service, but I would prefer  
10 it go to one of the three I just named.

11 Q Okay. So three, maybe four. Okay.

12 A Um-hmm.

13 Q Do you normally keep track or in your position are you  
14 normally aware of how many cases are currently pending  
15 against the City of Detroit at any one given time?

16 A Yeah, in a very broad sense. We are routinely -- or have  
17 been routinely required to prepare a quarterly report to the  
18 financial advisory board, which lists some broadly defined  
19 open matters and claims and things of that nature, so yes.

20 Q Okay. And do you, based upon that knowledge, in your  
21 position have any idea roughly how many cases were pending  
22 against the city on the date the city filed bankruptcy?

23 A In terms of litigation matters as we talk about  
24 litigation, I think it's in the neighborhood of 500. Again,  
25 it's a little bit elusive trying to figure out what an open

1 matter is because there's a long shelf life of typical  
2 litigation matters. It often takes months for cases that  
3 have been settled, for all practical purposes, to be closed  
4 out because of the cumbersome settlement process we  
5 undertake, and so Mr. Ashford, for example, because of the  
6 filing, I'm pretty sure he had right around 55 or so cases,  
7 some of them in very intense discovery and typical  
8 litigation, others of them waiting to be concluded, others of  
9 them just warming up. Mr. Muller has a lower number, but  
10 some of his cases are all-consuming, so it's a broad range,  
11 but on average probably 50 cases per senior litigator.

12 Q So on the date the debtor filed bankruptcy, the debtor --  
13 were you helpful in preparing any of the debtor's schedules?

14 A Well, I guided Ernst & Young and Jones Day to our  
15 software program, which accumulates that data on a daily  
16 basis.

17 Q Schedule G represented that there were approximately 700  
18 cases against the city at the date of filing. Is there any  
19 justification for you saying 500 versus 700? Can you explain  
20 the discrepancy maybe?

21 A Well, I looked through Schedule G, and it encompasses  
22 some cases and claims, so I was more comfortable with  
23 projecting a four or 500 range, 500 range as being cases that  
24 are actually -- something happening or something has got to  
25 get done before they're officially closed.

1 Q Um-hmm.

2 A Some of the matters on Schedule G were not as active as I  
3 would consider to be for open litigation.

4 Q Okay.

5 THE COURT: Excuse me. What is Schedule G?

6 MR. CARLSON: There was a schedule that we  
7 referenced in our papers, your Honor, that the city filed  
8 that was a list of the open matters against the City of  
9 Detroit, pending litigation.

10 THE COURT: And when and in -- when was that?

11 THE WITNESS: That was attached to the original  
12 bankruptcy filing, if I understand it.

13 MR. CARLSON: Yeah.

14 THE COURT: So attached to the petition itself --

15 MR. CARLSON: Yeah.

16 THE COURT: -- was a Schedule G?

17 MR. CARLSON: I believe it was attached to the  
18 petition. I have a copy if the Court would like one.

19 THE COURT: Any objection, Mr. Goodman?

20 MR. GOODMAN: No objection.

21 THE COURT: All right.

22 MR. CARLSON: You would like a copy?

23 THE COURT: Please.

24 MR. CARLSON: May I approach?

25 THE COURT: Yes, please.

1 MR. GOODMAN: Your Honor, I assume that Mr. Carlson  
2 will make a copy of that available to us at some point, so --

3 MR. CARLSON: Absolutely.

4 THE COURT: All right.

5 MR. CARLSON: I don't have an extra copy.

6 MR. GOODMAN: I don't get to cross-examine the  
7 witness with my blistering questions based upon it?

8 MR. CARLSON: Unless the Court would like to take a  
9 recess, and we can make a copy of it.

10 THE COURT: We can all share this one.

11 MR. CARLSON: Okay.

12 MR. GOODMAN: Thank you, your Honor.

13 THE COURT: For what it's worth to you, I don't know  
14 that it makes any difference, but I am looking at the  
15 original petition here on line, and this is not attached to  
16 it.

17 MR. CARLSON: Okay.

18 THE WITNESS: I believe it was included in a  
19 supplemental attachment or -- about two weeks after the  
20 initial petition was filed they then filed a whole revised  
21 list of schedules. As I recall, there was a problem  
22 initially with the data that was included --

23 THE COURT: You're talking -- yeah. You're talking  
24 about the list of creditors.

25 THE WITNESS: Possibly.

1 THE COURT: Okay. All right.

2 MR. CARLSON: And I'm sorry I don't have the docket  
3 number for you. I should have written down the docket number  
4 for you.

5 THE COURT: I can find it now that I know what  
6 you're referring to, so let me return this to you. Chris,  
7 counsel can use that. Okay. Just give me one second,  
8 please.

9 MR. CARLSON: Sure.

10 THE COURT: No. That's not it either. One more  
11 second, please. Okay. I think I have found it. Okay. So I  
12 think what you are referring to, just so the record is  
13 crystal clear here, is Docket Number 258 filed August 1st,  
14 which is the amended list of creditors, and there is a  
15 Schedule G here. Let me find that. Hold on. Yes. That's  
16 it. Okay. So you may proceed. I have that list here on my  
17 computer.

18 MR. CARLSON: Thank you, your Honor.

19 BY MR. CARLSON:

20 Q Mr. Keelean, out of the 500, 700 we've established, I  
21 think that it's a somewhat moving number depending on how you  
22 define active cases, I guess. How many of those cases,  
23 roughly, in your estimation, in your position as deputy  
24 corporation counsel, are assigned to the 17 or 18 litigators  
25 in the tort divisions? Do you have any feel for that number?

1 A It's probably 70 percent in very round figures --

2 Q Okay.

3 A -- 70 percent of that number.

4 Q Seventy percent of the number? Okay. Let's turn, if we  
5 could, to the bankruptcy filing for City of Detroit. Has the  
6 filing and the resulting implementation or impact of the  
7 automatic stay affected the workload of your city attorneys?

8 A Only to the extent that it has given us some breathing  
9 room, especially in the litigation arena, so that we can try  
10 to get our arms around the cases that are pending that we  
11 were having a hard time keeping up with during -- prior to  
12 July 18th, 2013. It has also in a peculiar sort of way added  
13 to the workload in the sense that we spend a lot of time  
14 interacting with outside bankruptcy counsel, consultants,  
15 Ernst & Young, et cetera, et cetera, for background data that  
16 touches on every aspect of the city operation, which the law  
17 department is equipped to talk about because they touch on  
18 practically every aspect of the city operation.

19 Q Okay. In the papers that were filed and from the motion  
20 that we were -- that we're here today on, there's an  
21 allegation that the city has nothing to do right now  
22 essentially, especially the 1983 specialists, because of the  
23 filings. Is that true?

24 A No.

25 Q Okay.



1 A Absolutely not.

2 Q And you described earlier -- and we also -- the city also  
3 filed in its papers that the bankruptcy has provided a  
4 valuable breathing spell. Has that breathing spell also  
5 resulted in cessation of outside counsel responsibilities on  
6 these cases at the time?

7 A No, not at all. I'm assuming that there will come a time  
8 when all these cases are going to be dealt with through the  
9 claims adjustment process or some other process, so the  
10 outside counsel and the inside counsel that are handling  
11 litigation and things in general are taking advantage of this  
12 stay and lull to basically get our arms around what we have,  
13 be prepared to hit the deck running, so to speak, when they  
14 are reactivated in whatever claims format or claims  
15 adjustment format or litigation format they end up going to.

16 Q And so specifically, as I mentioned earlier, the  
17 allegation was that your 1983 specialists -- and I'm not sure  
18 what that term means, but let's specifically turn to the  
19 three or four attorneys you have described previously that  
20 have significant experience and can handle very complex  
21 cases. Are they sitting around doing nothing?

22 A No.

23 Q What kind of activities would they be performing on a  
24 daily basis right now?

25 A Well, as I said, we still have the undertaking to try to

1 get all our ducks in a row of the cases that we have in  
2 place. We have also taken advantage of their being available  
3 to funnel their efforts in other directions. We have had a  
4 long need for more attorneys in certain areas of the  
5 practice, for example, Kimberly James. We just moved her  
6 over to the property tax section to relieve some  
7 oversubscription there. We have plans of helping -- of  
8 having the litigators help out the governmental affairs  
9 section, which is constantly being bombarded with lawsuits  
10 arising from the election's campaign and from an increase in  
11 requests for what we call third-party depositions throughout  
12 the city government, policemen, firemen. Those that are not  
13 involved in litigation are constantly called upon to give  
14 testimony or depositions in unrelated litigation. They are  
15 entitled to have an attorney represent them in those matters.  
16 We provide that attorney. We are -- we have suffered for a  
17 long time a shortage of manpower being able to manage that,  
18 so we reallocated some of our litigators to do that.

19 Q Okay.

20 A Also, in the prosecution unit -- local prosecution unit  
21 we've had -- the current receiver of the 36th District Court  
22 has been putting extreme pressure on us to provide more staff  
23 over there to help them catch their docket up, so we've done  
24 that with some of the folks that would otherwise have been in  
25 the litigation segment.

1 Q Okay. Thank you. If we could turn our focus back to a  
2 case that I mentioned earlier, which is the reason we're  
3 here, the case that Deborah Ryan -- Ms. Deborah Ryan filed  
4 against the City of Detroit, you mentioned that you're  
5 familiar with that case. Have you reviewed that file?

6 A I have.

7 Q Okay. And based upon your review, what's the status of  
8 that case currently procedurally?

9 A Mr. Muller filed a motion for summary judgment on July  
10 15th, three days before the filing.

11 Q And Mr. Muller is -- represents --

12 A He represents the City of Detroit.

13 Q Okay.

14 A He's seated in the courtroom. And he filed a motion  
15 after extensive discovery and deposition practice, and it's  
16 my understanding that that is -- that was poised to be  
17 briefed by the plaintiff and ready for oral argument anytime,  
18 so --

19 Q Okay.

20 A -- that's my understanding of where it stands.

21 Q Do you have any knowledge of whether or not discovery is  
22 closed in that case?

23 A My understanding from my conversations with Mr. Muller,  
24 that there is the possibility that --

25 MR. GOODMAN: Your Honor, I want to object based

1 upon hearsay at this point if this is based upon  
2 conversations with Mr. Muller, but --

3 MR. CARLSON: Your Honor, he's represented that he  
4 reviewed the file. He's directly responsible for Mr. Muller  
5 and his caseload, and he has firsthand knowledge.

6 THE COURT: The objection is sustained.

7 BY MR. CARLSON:

8 Q So you have identified that Mr. Muller is -- you said  
9 Mr. Muller is responsible for this case; correct?

10 A Correct.

11 Q Okay. Is he one of the three or four senior litigators  
12 that you referenced earlier that has ability to handle  
13 complex cases?

14 A He is.

15 Q Okay. Do you know on the date of bankruptcy filing  
16 approximately how many active cases he was handling as a city  
17 attorney?

18 A I believe it was right around 30, 35.

19 Q Okay. And based upon your understanding and your  
20 position as Mr. Muller's boss and his caseload, do you have  
21 any idea how many other cases he's handling which are  
22 somewhat similar in complexity and size to Ms. Ryan's case?

23 A Oh, I'm going to say about ten, but that's kind of in the  
24 nature of a guesstimate.

25 Q Okay. And based upon your position and your

1 understanding of Ms. Ryan's case and Mr. Muller's abilities,  
2 if this Court were to grant relief from stay and allow Ms.  
3 Ryan's case to go forward, would that overload Mr. Muller?

4 A I'm sure he would be able to devote the amount of  
5 attention that it would require to get it through the summary  
6 judgment phase, argument, and whatever subsequent proceedings  
7 there would be attendant on that. One case is not going to  
8 bring the world to an end, but two cases maybe. I mean this  
9 could be the beginning, I would assume, of a whole slew of  
10 motions to relieve the stay, so that would be a problem. One  
11 case he can handle. We will support him with an additional  
12 attorney and staff and so on, but --

13 Q So you would be required to add additional staff or the  
14 city would allocate additional resources to help?

15 A True.

16 Q Then why is the city so concerned? If this one case will  
17 not overload Mr. Muller or the law department, what's the  
18 concern of the city?

19 A Because I'm sure there are hundreds, if not -- well,  
20 there's several hundred other cases of similar import, if you  
21 will, to the plaintiffs and the plaintiff's attorneys, and I  
22 expect we will have a steady drumbeat of similar requests,  
23 and I'm not sure why they shouldn't also request such relief  
24 if it's granted in this case.

25 Q Are you aware of other cases and other plaintiffs that

1 are requesting --

2 A I have daily conversations with various distinguished  
3 plaintiffs' lawyers around town about what we're going to do  
4 about the pending matters. On the day the matter -- the  
5 petition was filed, the Law Office of Sam Bernstein had a \$3  
6 million judgment become final. They call me practically  
7 daily asking me what we might be able to do with that.

8 Q So in your position as deputy corporation counsel and  
9 based upon your knowledge of the workloads and the attorneys  
10 you oversee, if all of the bankrupt -- or all of the pending  
11 tort cases were granted relief from stay and allowed to go  
12 forward, would the city be overloaded?

13 MR. GOODMAN: Objection, your Honor. It's pure  
14 speculation since that's not the issue before the Court.

15 THE COURT: Overruled. Go ahead.

16 THE WITNESS: Yes.

17 THE COURT: Please answer the question.

18 BY MR. CARLSON:

19 Q Please answer the question.

20 A Yes.

21 MR. CARLSON: I have nothing further at this point,  
22 your Honor.

23 MR. GOODMAN: One moment, your Honor.

24 THE COURT: Yes, sir.

25 CROSS-EXAMINATION

1 BY MR. GOODMAN:

2 Q You've indicated -- first of all, good morning --

3 A Good morning.

4 Q -- Mr. Keelean. You and I know one another, do we not?

5 A We do.

6 Q And you have indicated, I believe, that there's been a  
7 considerable amount of work done in the Deborah Ryan matter;  
8 is that correct?

9 A That's my belief.

10 Q Do you have any idea how many depositions have been  
11 taken?

12 A Seems to me 20 was mentioned. I saw you around our  
13 office.

14 Q If I said 29, would you disagree with me?

15 A (No verbal response)

16 Q And in that regard, the City of Detroit Law Department  
17 has been represented at each of these depositions; is that  
18 right?

19 A Correct.

20 Q And corporation counsel has shown up in each of these  
21 depositions; is that correct?

22 A Correct.

23 Q And that has been an ongoing matter for at least two to  
24 three years. Am I right about that?

25 A My belief.

1 Q And over those two to three years, the city has not --  
2 the staffing for the City of Detroit Law Department has not  
3 been notably different than it is at present; is that  
4 correct?

5 A Not true.

6 Q When is it that the -- let me put it this way. In 2011  
7 how many attorneys were working for the City of Detroit Law  
8 Department?

9 A Let me answer the question this way. Over the last two  
10 years we have had 27 lawyers depart representing over 500  
11 years of law department experience. To replace them we have  
12 hired six lawyers, who have collectively 20-some years'  
13 experience and none of it in the law department.

14 Q When did they -- when did the City of Detroit file for  
15 bankruptcy?

16 A July 18th.

17 Q And how many lawyers have resigned since July 18th?

18 A Have resigned since 18th?

19 Q Or have left the department -- left your department.

20 A I don't think -- I don't think any. One lady left around  
21 about that time. I don't know whether it was before or  
22 after.

23 Q Zero or one; right?

24 A Since July 18th?

25 Q Yeah.



1 A Correct.

2 Q So leading up to that point, the staffing for the law  
3 department was not notably any different than it is at  
4 present. Am I correct?

5 A "Leading up" is an elusive word. Toward the end of 2012,  
6 we had an exodus of people retiring -- submitting their  
7 retirement paperwork. For a period of time from January  
8 through March of 2013, they were still running out their  
9 vacation time. They would answer the phone when you'd call.  
10 They'd tell you where the files were if you asked, but they  
11 weren't there daily actively, so no.

12 Q And how many of these 29 depositions were taken in the  
13 year 2013? Do you know?

14 A That I don't know.

15 Q How many were taken in 2012? Do you know?

16 A No.

17 Q There were many, though, were there not?

18 A I would assume.

19 Q Even with the burdens of staffing that you've described;  
20 is that correct?

21 A That is correct.

22 Q And Mr. Muller and before him Mr. Schapka were able to do  
23 all the work that was necessary to defend the City of Detroit  
24 in this case. Am I correct about that?

25 A Yes.

1 Q And, in fact, they did all of the -- all of the motion  
2 work and pleading work that was necessary to defend the City  
3 of Detroit; is that correct?

4 A That is correct.

5 Q And, in fact, Mr. Muller prepared an extensive motion for  
6 summary judgment and briefed it and did a competent, in fact,  
7 excellent job in doing so; is that correct?

8 A It was an excellent job; correct.

9 Q And that was done under the burdens -- the staffing  
10 burdens that you've already described. Am I correct about  
11 that?

12 A Yes, sir.

13 Q And have you looked at the witness list that your client  
14 has -- or the City of Detroit has filed in this case?

15 A I did, but I'm not sure how recently. It's been awhile.

16 Q Do you have any idea how many police officers have been  
17 listed as witnesses in this case?

18 A I don't.

19 Q I'm going to hand you what has been marked Exhibit 1 and  
20 ask you if you can identify it.

21 A I can identify it by looking at the various footers and  
22 the pleading nature as the witness list -- or a witness list  
23 filed by the defendant, City of Detroit, Dwayne Blackmon and  
24 Barbara Kozloff.

25 THE COURT: Do you actually recognize the document?

1           THE WITNESS: To the extent I just testified to. I  
2 recognize it as originating from the law department. I can  
3 see that it's a pleading filed in the Wayne -- in the --

4           THE COURT: Well, but do you remember having seen it  
5 before or not?

6           THE WITNESS: I don't.

7 BY MR. GOODMAN:

8 Q Do you have any reason to disagree with the authenticity  
9 of this document as a witness list filed on behalf of your  
10 client in this case?

11 A None.

12           MR. GOODMAN: I offer it into evidence, your Honor.

13           MR. CARLSON: No objection.

14           THE COURT: All right. Exhibit 1 is admitted.

15           (Exhibit 1 received at 9:34 a.m.)

16 BY MR. GOODMAN:

17 Q Now, taking a look at that, can you tell me how many of  
18 the witnesses that you have listed in this case are City of  
19 Detroit police officers or supervisors?

20 A I can't really say that because I assume some of these  
21 include Canton police.

22 Q Some of them -- I believe you're correct -- are Canton  
23 officers, but if I were to tell you that there are at least  
24 13 officers who the City of Detroit has listed as witnesses  
25 in this case, would you have any reason to disagree with

1 that?

2 A No.

3 Q So that there -- you would agree then with the  
4 proposition that there are at least 13 Detroit police  
5 officers who are percipient witnesses in this litigation; is  
6 that correct?

7 A I'm sorry. Your word was what?

8 Q Percipient, that they have knowledge of things as they  
9 went on.

10 A I can't comment on that. They may have some greater or  
11 lesser knowledge than percipient, but --

12 Q But they were listed by your office as witnesses.

13 A I can see that, yes.

14 Q Right. And you understand that there is ongoing  
15 litigation in this matter as to the -- as to Canton Township  
16 and Canton police officers; is that correct?

17 A That is my understanding.

18 Q And if that matter goes to trial, all of these witnesses  
19 may be called as witnesses --

20 A Yes.

21 Q -- in the Canton case?

22 A Yes.

23 Q And if that were to happen, City of Detroit Law  
24 Department attorneys would probably have to attend those  
25 hearings with those witnesses in order to follow what they

1 have to say; is that correct?

2 A Are you presuming that the City of Detroit will still be  
3 a defendant, active defendant in that matter?

4 Q No. Even with the city -- if the City of Detroit is in  
5 its current status of a stayed defendant here in Bankruptcy  
6 Court, their interests will have to be attended to in court  
7 by City of Detroit Law Department attorneys; isn't that  
8 right?

9 A That is likely, yes.

10 MR. CARLSON: Your Honor, objection. That calls for  
11 a legal conclusion regarding the impact of the automatic stay  
12 on these police officers and their testimony in another case.

13 THE COURT: No. I don't think so. The objection is  
14 overruled. The answer will stand.

15 MR. GOODMAN: Thank you.

16 BY MR. GOODMAN:

17 Q Now, you mentioned that there are -- I think you said  
18 several hundred cases that are similar to this particular  
19 case, and you indicated some concern about a floodgate  
20 phenomenon occurring if the stay were to be lifted in this  
21 case. Do you recall that testimony, sir?

22 A I don't believe I said hundreds of this nature. I said  
23 there were several, and I was concerned about the floodgate  
24 nature, yes.

25 Q When you say "several," how many do you mean?

1 A Well, I have at least two more with your office, as a  
2 matter of fact, and so "several" would be probably 30.

3 Q And by the way, our office has a small handful of cases  
4 compared to other offices that have dozens and dozens of such  
5 cases; right? Isn't that right?

6 A Well, yeah, but other offices don't have dozens and  
7 dozens of 1983 actions of this magnitude. Let's put it that  
8 way.

9 Q So that leads me to my next question. Given the fact  
10 that this is a 1983 action, how many cases are there similar  
11 to this one, 1983 cases, in which there is ongoing litigation  
12 against a co-defendant and in which the action as to the City  
13 of Detroit and its employees have been stayed?

14 A I don't really know that number. That could be a very --  
15 you know, that would be subject to being reviewed.

16 Q Can you --

17 A I don't know how many times we're a codefendant. I think  
18 not so many times are we codefendant with other police  
19 departments.

20 Q Can you think of any other case similar to this one with  
21 that structural dynamic to it?

22 A I can't name you a case, but I'm sure there's at least a  
23 few that are of similar ilk.

24 Q By the way, we talked about Mr. Muller's excellent motion  
25 and brief for summary judgment. Have you expressed any

1 confidence in the outcome of that motion and believe that it  
2 has a reasonable or good chance of success?

3 A I was persuaded by it.

4 Q All right. Given that, how much work is there for the  
5 City of Detroit Law Department doing this case once the -- if  
6 the plaintiff were allowed to file a response? What other  
7 work has to be done by your office?

8 A Well, I presume that if you did a response, a reply would  
9 be required, so there would be some level of activity there.  
10 If the matter was then decided on a motion, there would be  
11 oral argument, preparation, et cetera. Hopefully, if the  
12 city were to prevail, that would be probably the first stage  
13 of what would become an appellate process and so on down the  
14 road.

15 Q Relatively --

16 A If the motion is denied, then we are on for the duration  
17 till trial.

18 Q If the motion is denied, you may appeal.

19 A Likely so.

20 Q Regardless, given Mr. Muller's capabilities -- and I  
21 think you indicated he is here in court today, is that right,  
22 sir?

23 A He is.

24 Q Given his capabilities, I'm sure you're confident that he  
25 can handle the responsibility of replying to anything I might

1 be able to generate and argue effectively in front of Judge  
2 Goldsmith if this matter were to be before him again.

3 A I am.

4 Q And that would take a relatively small amount of work and  
5 time on his part compared to his other responsibilities and  
6 duties, would it not?

7 A I don't agree with that.

8 Q All right. I think you've indicated that one of the  
9 benefits of the bankruptcy filing for your department has  
10 been that you've been given some breathing room I think was  
11 the phrase you used, is that correct, sir --

12 A Correct.

13 Q -- so that you could get your arms -- your lawyers could  
14 get their arms around their responsibilities and figure out  
15 where to go when next they have to engage in litigation, is  
16 that correct, sir?

17 A There you're right.

18 Q And in those cases, you, your office, your client, are  
19 defendants in actions that are being prosecuted by plaintiffs  
20 and plaintiffs' attorneys, is that right, almost exclusively?

21 A I believe that's true.

22 Q I mean there are cases in which the city becomes a  
23 plaintiff and --

24 A Sure.

25 Q But that's rare; is that right?



1 A There are some. I don't know what the percentage is, but  
2 it happens.

3 Q So what you have expressed as breathing room is something  
4 that every defense attorney or every defendant is looking for  
5 in any case, which is some relief from the pressure and  
6 ongoing pressure of litigation; isn't that right?

7 A Especially if they're short-staffed at the time.

8 MR. CARLSON: Objection. Calls for speculation of  
9 what other attorneys want.

10 THE COURT: The objection is sustained.

11 MR. GOODMAN: All right. Excuse me, your Honor. I  
12 apologize.

13 BY MR. GOODMAN:

14 Q You indicated that now that you have this breathing room,  
15 you, your staff, your attorneys, are spending a certain level  
16 of their time working with debtor's counsel, bankruptcy  
17 counsel in this matter, is that correct, sir?

18 A Correct.

19 Q Have you quantified that at all? Can you give us any  
20 percentage whatsoever as to what that is?

21 A In terms of hours or --

22 Q Yeah, in terms of percentage of time.

23 THE COURT: I'm sorry. Percentage of time what?

24 MR. GOODMAN: A percentage of the time of the staff  
25 or the time of any particular attorney. Any quantification

1       whatsoever is all I'm looking for.

2               THE COURT:   But a percentage of time doing what?

3               MR. GOODMAN:   Helping bankruptcy counsel.

4               THE COURT:   Thank you.

5               THE WITNESS:   Well, we spend -- the time that I'm  
6       thinking about are both bankruptcy counsel such as Jones Day  
7       and Miller Canfield but also Conway MacKenzie, the  
8       consultants, Ernst & Young.  There's a whole gamut of them.  
9       I would guesstimate that my time is upwards to 40 percent, 50  
10      percent devoted to that activity.  Others like Mr. Muller and  
11      others get called in to respond to specific factual inquiries  
12      about specific cases such as the Ryan matter, so I don't know  
13      as I can give you a percentage on their behalf.  I can tell  
14      you that I spend a lot of time doing it.

15      BY MR. GOODMAN:

16      Q     And I appreciate that, and you are an important person in  
17      the department, but you're only one person, isn't that right,  
18      sir?

19      A     Correct.

20      Q     When you say that Mr. Muller got called on the Ryan  
21      case -- and I presume that he did -- how many other such  
22      cases, if you know, has Mr. Muller been called on and  
23      consulted with regard to?

24      A     I'm not aware of any others wherein the plaintiffs have  
25      sought a relief from stay.

1 Q And given that, let's just use Mr. Muller as an  
2 example -- and I apologize to him now for referring to him in  
3 these ways, but what other matters is Mr. Muller working on  
4 in addition to having advised counsel in this matter with  
5 regard to the Ryan matter?

6 A Well, he has been principally responsible for resolving  
7 the ongoing dispute with the owner of the Wurlitzer Building  
8 on Broadway. That was quite an accomplishment on his part.

9 Q I'm familiar with that, yeah.

10 A There are other cases of that nature that he's involved  
11 in, nontort-related, more commercial-type litigation.

12 Q And Mr. Muller was involved in the Wurlitzer Building  
13 litigation long before --

14 A Oh, yes.

15 Q -- the bankruptcy filing; isn't that right?

16 A Right.

17 Q And, in fact, that matter has more or less been resolved,  
18 as I understand it, has it not?

19 A Well, given the history of that case, I'll believe it's  
20 resolved when it's resolved.

21 Q Okay.

22 MR. GOODMAN: One moment more, your Honor. I'm  
23 almost done.

24 THE COURT: Yes, sir.

25 BY MR. GOODMAN:

1 Q You mentioned before outside counsel, is that correct,  
2 sir?

3 A Yes, sir.

4 Q And you and I can both think of at least one case in  
5 which there have been a number of outside counsel --

6 A Yes.

7 Q -- retained. Those counsel have an ongoing relationship  
8 with the law department, is that correct, continuing?

9 A Hopefully, yes.

10 Q And have they continued to work with you since the  
11 bankruptcy filing?

12 A Yes, but it's been only to call and say what's going on,  
13 how come our bills aren't getting paid and so on.

14 Q Um-hmm.

15 A They recognize the stay for what it is, so they're --  
16 they are collecting their thoughts as well.

17 Q So they've got breathing room as well, is that correct,  
18 sir?

19 A Yes.

20 Q All right. Other than this matter, can you think of any  
21 other similar cases, 1983 cases or personal injury cases of  
22 any sort, in which the former plaintiff has become a movant  
23 before this Court and asked for relief from the stay as Ms.  
24 Ryan has?

25 A Yes. I believe there was one just last week, Devery

1 Jones. There was also one involving Mr. Beydoun, who has a  
2 multi-million dollar verdict that he'd like to collect on.  
3 I'm told that there -- oh, there was a matter involving  
4 AFSCME and their right to the 13th check, and --

5 Q Well, of course, that's not a case such as Ms. Ryan's  
6 personal injury or 1983 case; right?

7 A True.

8 Q Okay. So you can think of two others; is that correct?

9 A Yes.

10 MR. GOODMAN: All right. That's all I have, your  
11 Honor. Thank you.

12 CROSS-EXAMINATION

13 BY MS. PATEK:

14 Q Good morning, Mr. Keelean.

15 A Good morning.

16 Q Barbara Patek on behalf of the Detroit Command Officers  
17 Association and the Lieutenants & Sergeants Association. Am  
18 I correct that Sergeant Barbara Kozloff is a current employee  
19 of the City of Detroit?

20 A That's my understanding.

21 Q And Inspector Dwayne Blackmon is also currently employed  
22 by the City of Detroit?

23 A That's my understanding.

24 Q And are you familiar with the city ordinance 13-11-b and  
25 the city employment terms which give the city certain

1 obligations with respect to Sergeant Kozloff and Inspector  
2 Blackmon?

3 A I am broadly aware of both of those, yes.

4 Q And can you generally describe for the Court what those  
5 rights are?

6 A That they are entitled to an indemnity and defense for  
7 those activities undertaken in the good faith performance of  
8 their duties.

9 Q And currently the -- currently those individuals are  
10 protected by the extended stay; is that correct?

11 A That is correct.

12 Q If the stay were lifted and there were a judgment in this  
13 case against Sergeant Kozloff and Inspector Blackmon, am I  
14 correct that the city's obligation to indemnify them would  
15 remain stayed?

16 A That's my belief.

17 MS. PATEK: That's all I have, your Honor.

18 MR. CARLSON: I have nothing further, your Honor.

19 MR. GOODMAN: One moment, your Honor. Just one  
20 other matter, your Honor, if I may, just to clear up one  
21 thing.

22 THE COURT: Go ahead, sir.

23 RECROSS-EXAMINATION

24 BY MR. GOODMAN:

25 Q I think you indicated that Mr. Muller had moved over from

1 general litigation to commercial and tort litigation, is that  
2 correct, sir --

3 A Yes.

4 Q -- at some point?

5 A Yes.

6 Q Was this the only 1983 case he was working on then as of  
7 the filing of the bankruptcy in this matter?

8 A I don't think so, but I am not entirely sure.

9 MR. GOODMAN: All right. Thank you. That's all I  
10 have.

11 THE COURT: Stand by one second, please. You  
12 suggested in your testimony, sir, that you and your  
13 department have used the opportunity that the automatic stay  
14 provided in this bankruptcy case to get your arms around the  
15 cases that you have so that you could be prepared to deal  
16 with whatever process would be invoked to liquidate these  
17 claims. Is that a fair summary?

18 THE WITNESS: Yes, sir.

19 THE COURT: Okay. And, of course, it's been two or  
20 three months now since the bankruptcy has been filed, so my  
21 question for you is at what point in time or how much longer  
22 would your office need to complete that process of preparing  
23 for whatever procedures are invoked to liquidate these  
24 claims?

25 THE WITNESS: Let me answer it this way. For those

1 that had gone far enough along in the process to be  
2 completely -- completed the discovery and the like, I believe  
3 we are prepared to go back to where we were on July 18th  
4 whenever the Court says so. For those that were in the early  
5 stages of the discovery process, assembling of data and so on  
6 and so forth, I don't know as we can ever get our arms around  
7 what we're going to need to know if and when the stay is  
8 resolved without getting additional data on those cases so we  
9 can evaluate and work through the appraisal process.

10 THE COURT: What additional data?

11 THE WITNESS: Well, I'm envisioning cases through --  
12 in the inventory of cases, there's a whole host of them which  
13 we may only have a complaint, and without any background  
14 data, how do you defend a case of this magnitude or this type  
15 without knowing more about the facts underlying the  
16 complaint, the event that led to the lawsuit, et cetera, et  
17 cetera? That's what I'm talking about, those -- seems to me  
18 whenever this Court resolves --

19 THE COURT: It strikes me that you have perhaps  
20 misunderstood my question. My question was not when will the  
21 city be ready to go to trial on these cases. That's  
22 obviously a case-by-case determination; right?

23 THE WITNESS: Right.

24 THE COURT: My question was when will the city be in  
25 a position to begin the process again or reopen the process



1 again of litigating these matters, which means trying those  
2 that are ready for trial, going to discovery on those that  
3 are ready to go to discovery, going to answer on those that  
4 need answers filed; in other words, to get back to the normal  
5 process of defending these actions?

6 THE WITNESS: Well, we wouldn't be ready to go the  
7 day after you dissolve the stay. We have several vacancies  
8 that were not filled and can't be filled currently or they're  
9 not going to be filled currently that would otherwise be  
10 engaged in trying to deal with these 500 cases.

11 THE COURT: Um-hmm.

12 THE WITNESS: So I guess the answer is if you can  
13 tell me that at a date certain that everything is going to be  
14 back in the litigation mode again, then I can give you a 30-,  
15 90-, 60-day window at which we should have the ability to  
16 deal with that, but it's going entail adding personnel,  
17 reallocating resources.

18 THE COURT: Well, let's talk about that. As I look  
19 at the chart, it looks like in litigation and C&T litigation,  
20 in those two columns, there are 18 attorneys presently  
21 employed. Is that right?

22 THE WITNESS: Sounds right.

23 THE COURT: And there -- it looks to me like there  
24 are two attorney vacancies in those two columns. Is that  
25 right?

1           THE WITNESS: It is, but the vacancy blocks don't  
2 necessarily mean that there shouldn't be more people added to  
3 that branch. We left the vacancy blocks where they were when  
4 the prior occupant left, but if I were to redesign the  
5 vacancy allocation, there would be more in the litigation  
6 and -- commercial and tort litigation as it exists right now.

7           THE COURT: Just focusing on the two that are there  
8 for this one question, what are the obstacles you face in  
9 filling those vacancies?

10          THE WITNESS: Well, there is a laborious process  
11 that entails getting the human resources director, the budget  
12 director, the finance director, the department head, the EM,  
13 et cetera, et cetera, to sign off on one sheet that says you  
14 can go fill one position, and once that's done, then you have  
15 a 30- to 60- to 90-day lag time before you actually get the  
16 suitable replacement to do that, so there's that type of  
17 challenge.

18          THE COURT: Okay. So have you embarked upon that  
19 process for either of these two vacancies?

20          THE WITNESS: We have -- we took a -- we undertook  
21 the process of replacing the vacancies we had starting, I  
22 think, in February of this year, so we interviewed ten  
23 potential assistant corporation counsel. We were able to  
24 add, I believe, three off of that list. That's part of the  
25 six I alluded to earlier. We have two more on that list, one

1 more right on the list that I would like to bring in tomorrow  
2 if we could do it, but then again we would have to  
3 reinterview several people, especially if we go to the senior  
4 ranks. That's the areas where we need the help, so that  
5 would be starting a new list, so to speak. It could be done,  
6 but it would take, you know, some period of time to do that.

7 THE COURT: And in your judgment, how many  
8 attorneys, including the two that are shown in these two  
9 columns, would you have to hire in order to provide the city  
10 with adequate defense of all of the litigation pending  
11 against it now?

12 THE WITNESS: I would like to fill all the eight  
13 positions that are in our budget. We have gone back and  
14 forth with the administration, Conway MacKenzie, et al.,  
15 about the right number for the law department. They have, I  
16 think, come to the conclusion that 96 is the right number,  
17 which has been our request for two years. I would like to  
18 fill in the eight attorney vacancies that we are entitled to  
19 under that allocation.

20 THE COURT: And your testimony is that the obstacle  
21 to filling those eight is the approvals necessary within the  
22 city and with the city's consultants and its emergency  
23 manager?

24 THE WITNESS: And the recognition that the law  
25 department is going to exist in this format after they exit

1 the bankruptcy.

2 THE COURT: Is there a question about that?

3 THE WITNESS: On any given day, I assume somebody is  
4 asking that question. That's been a question I've gotten for  
5 the last three years almost daily.

6 THE COURT: Counsel, any further questions?

7 MR. CARLSON: Nothing from the city, your Honor.

8 MR. GOODMAN: Just one moment, your Honor.

9 THE COURT: Yes, sir. Take your time.

10 MR. GOODMAN: Just, if I may, one follow-up, your  
11 Honor. I want to ask about --

12 THE COURT: Stand by a microphone for me, please.

13 MR. GOODMAN: What was this exhibit number? Do you  
14 remember?

15 MR. CARLSON: I didn't make it an exhibit.

16 MR. GOODMAN: Oh, it's not an exhibit, but it's  
17 Schedule D, I think.

18 THE COURT: Schedule G attached to the list of  
19 creditors.

20 RECROSS-EXAMINATION

21 BY MR. GOODMAN:

22 Q Do you have a copy with you?

23 A I don't.

24 MR. GOODMAN: Can I use your copy? We only have one  
25 copy, I guess.

1 THE COURT: Is there just the one copy here in  
2 court?

3 MR. GOODMAN: May I approach the witness, your  
4 Honor?

5 THE COURT: There's just the one copy here in court.

6 MR. GOODMAN: May I approach the witness?

7 THE COURT: Yes.

8 MR. GOODMAN: I think you -- can you hear me, your  
9 Honor, on this microphone?

10 THE COURT: Turn it facing more -- there you go.  
11 Now we're all set. Go ahead.

12 BY MR. GOODMAN:

13 Q As we look at this document, Mr. Keelean, are all of the  
14 matters that are set forth in the column on the left  
15 individual matters that are counted as the four, five, or  
16 several hundred that you've mentioned in your testimony?

17 A I'm not sure I can vouch for that precisely because I  
18 haven't gone through this exhibit -- or this Attachment G  
19 with that kind of fine-tooth comb.

20 Q Well, let me ask you a question about it. If we turn to  
21 any page here, let's say -- is this the second or third  
22 page -- the third page of this document, we see long lists of  
23 matters or items with no case name and no description  
24 whatsoever. Do you see that?

25 A I do.

1 Q And that's true on every page in this document; is that  
2 correct?

3 A I'll take your word for it.

4 Q And that being the case, can you tell us what those  
5 matters are with no description or no case names attached to  
6 them?

7 A I would assume that they are, as indicated by the column  
8 entitled "claim number," a lot of the ones that are missing  
9 any description are numbered such that they would be claims.  
10 We have a claims section in our law department, so they get  
11 the tree falls on the sidewalk or those kind of claims.  
12 Property damage claims come in. They're given numbers that  
13 have the department, which is A32 -- that's the law  
14 department -- and then 950 tells me that's a claim, not an  
15 open litigation necessarily. It may become and may have  
16 become --

17 Q It may or may not?

18 A No. It may become a litigation claim.

19 Q Or it may not.

20 A Yeah.

21 Q These are inchoate matters; is that correct?

22 A That would be a word -- well, not all of them. Not all  
23 the claims are inchoate. There may be parallel litigation  
24 involving that matter.

25 MR. GOODMAN: All right. That's all I have, your

1 Honor. Thank you.

2 THE COURT: Sir, you may step down. Thank you very  
3 much for coming today.

4 (Witness excused at 10:00 a.m.)

5 THE COURT: Mr. Carlson.

6 MR. CARLSON: I have nothing further to add, your  
7 Honor. You know, the --

8 THE COURT: No further witnesses?

9 MR. CARLSON: No further witnesses.

10 THE COURT: Mr. Goodman, any witnesses?

11 MR. GOODMAN: We have no witnesses, your Honor.

12 THE COURT: I'd like to call Mr. Muller.

13 MICHAEL MULLER, WITNESS, SWORN

14 THE COURT: Please sit down.

15 EXAMINATION

16 BY THE COURT:

17 Q And what is your name, sir?

18 A Michael Muller.

19 Q Muller. All right. My apologies to you. And you are a  
20 senior assistant corporation counsel for the City of Detroit?

21 A I am.

22 Q At this point in time, say within this week or last week  
23 or next week, what percentage of your time are you spending  
24 on matters or issues or questions that result directly from  
25 the bankruptcy filing as opposed to normal City of Detroit

1 litigation?

2 A I field questions every day from plaintiffs' attorneys  
3 who are aggravated by the stay, and we also have to deal with  
4 folks who are on a continuing basis. They somehow don't know  
5 that there's a stay or so they say or that serving a subpoena  
6 or scheduling a deposition violates the stay, so I have to  
7 deal with that, too. On my caseload, as do all the  
8 litigation attorneys with their own caseloads, I would  
9 estimate that's probably -- I don't know -- 15 percent, 10  
10 percent. It's a small percent.

11 Q Of course, if relief from stay were granted in all those  
12 cases, you wouldn't be getting those phone calls or those  
13 stay violation issues.

14 A That's absolutely correct, although it's not -- I was  
15 litigating the matters before the stay, so I can certainly  
16 litigate them after, but, again, the whole discovery process  
17 and everything involves far more than me. It involves a  
18 tremendous amount of time that's put in by my clients,  
19 whatever department I'm defending, like the police officers.  
20 When I'm asked to produce thousands of documents by Mr.  
21 Goodman, who's an extremely thorough attorney, my clients  
22 have to go out and actually dig those documents up, and that  
23 takes a lot of time.

24 Q Um-hmm. Okay. But just to get back to my first  
25 question, is there any other kind of issue or question that



1 takes your time that arises from the bankruptcy itself as  
2 opposed to general litigation that you would have been  
3 involved in if the bankruptcy hadn't been filed?

4 A Well, no, not really. I mean we have to evaluate our  
5 cases and place them in a position where we can explain to  
6 the bankruptcy lawyers for the claims process what the --  
7 give them a good evaluation on the case so that they can --

8 Q Right.

9 A -- do whatever they have to do in bankruptcy -- I don't  
10 know what they do -- but apart from that, no.

11 Q Um-hmm. And in any given period of time, what percentage  
12 of your time do you spend doing precisely that?

13 A For me personally, that process on the cases where enough  
14 has been done where they can be evaluated is concluded for  
15 me. I have a number of 1983 cases that I'm defending that  
16 just started, and, as a result, I'm unable to evaluate them  
17 properly. I do have our end of it, but I don't have the  
18 plaintiff's end of it, so --

19 Q Right. You just have what they say in the complaint?

20 A That's correct.

21 Q Okay.

22 A And our documents.

23 Q So I feel compelled to ask you how are you spending your  
24 time these days?

25 A Well, as my boss indicated, I have other cases that are

1 kind of still active because they involve injunctive relief  
2 and the like.

3 Q Are these cases that would not be stayed by the automatic  
4 stay?

5 A They would, but they're still ongoing like the Wurlitzer  
6 Building case. We need to make that building safe or it's  
7 going to kill somebody, and so while it technically may be  
8 stayed, it's in closed -- it's hard to explain. It's in  
9 closed status, final status in Wayne County Circuit Court,  
10 yet I meet on it -- well, last week I met every single  
11 morning with Judge Colombo at eight o'clock in the morning.  
12 And for the last two years we've met in chambers every Monday  
13 at eight in the morning. It's just an ongoing thing because  
14 we have to make the building safe or it's going to kill  
15 somebody, so --

16 Q Um-hmm.

17 A -- yeah, that -- those kinds of things are ongoing. I'm  
18 also -- I've been directed to appear for transactional  
19 lawyers in the election's matters. Robert Davis just keeps  
20 filing lawsuit after lawsuit every day, and so -- TRO  
21 matters. When matters come up like that, my time is  
22 allocated to it because I do -- I do have extra time now that  
23 the stay --

24 Q Aren't Mr. Davis' matters stayed by the automatic stay?

25 A It doesn't seem to affect him at all.

1 Q Well, but answer my question.

2 A I do believe that they -- at least some of them are  
3 stayed, yes. It's my understanding -- I am far from a  
4 bankruptcy expert, but it's my understanding --

5 Q Okay.

6 A -- that injunctive actions are stayed under 362, but I do  
7 not know much about bankruptcies.

8 Q You know enough to know that if his lawsuit violates the  
9 automatic stay, you have remedies with this Court?

10 A Yes. That's what I've been telling --

11 THE COURT: All right. That's all the questions I  
12 have. Any questions for the witness?

13 MR. GOODMAN: One moment, your Honor.

14 THE COURT: Mr. Carlson, I'll offer you first.

15 MR. CARLSON: One second. No, your Honor.

16 THE COURT: Mr. Goodman, any questions?

17 MR. GOODMAN: One moment.

18 THE COURT: Yes, sir. Take your time.

19 CROSS-EXAMINATION

20 BY MR. GOODMAN:

21 Q Good morning, Mr. Muller.

22 A Good morning, Bill. How are you?

23 Q I'm well. Thank you. Let me ask you this. You  
24 understand that this matter, the Ryan matter, is ongoing as  
25 to Canton and the Canton defendants; is that correct?

1 A That's correct.

2 Q And if it does proceed to trial, there will be a number  
3 of witnesses from Canton and from the City of Detroit Police  
4 Department who will have information that will render them --  
5 make them witnesses in the matter; right?

6 A Maybe 18 to 24 months down the road it would proceed to  
7 trial after it comes back from the Sixth Circuit.

8 Q Well, that's if Canton -- if Judge Goldsmith denies  
9 Canton's motions for summary judgment and if Canton decides  
10 to engage in an interlocutory appeal; is that right?

11 A Yes, and the same would hold true for me. Either way  
12 that the summary judgment is ruled on, it's going to the  
13 Sixth Circuit. If it's granted, you're taking it to the  
14 Sixth Circuit. If it's denied, Canton and the City of  
15 Detroit are taking it to the Sixth Circuit. And it'll sit  
16 there right till the time of discharge in this case.

17 Q Just for the moment now --

18 A We'll never liquidate the claim.

19 Q Let me please complete my thought here. Just for the  
20 moment, Detroit is not in the matter anymore. It's been  
21 administratively closed as to Detroit and Blackmon and  
22 Kozloff. Is that right?

23 A That's right.

24 Q All right. So we have a case against Canton. They have  
25 a motion for summary judgment; is that right?

1 A Right.

2 Q If that motion is denied, then Canton can either decide  
3 to engage in an immediate interlocutory appeal or they can go  
4 to trial and appeal that ruling after trial; is that correct?

5 A Absolutely.

6 Q And that could happen fairly quickly; isn't that right?

7 THE COURT: When you say "that could happen," could  
8 you specify what --

9 MR. GOODMAN: Trial. I'm sorry, your Honor.

10 THE COURT: Trial?

11 MR. GOODMAN: Trial.

12 THE WITNESS: I don't think that that -- well, you  
13 could have a trial probably, I think -- I think the  
14 scheduling is for April of 2014.

15 BY MR. GOODMAN:

16 Q I think the current trial is scheduled for November 4th,  
17 2013, but it could change.

18 A Yeah. It probably will change because I believe Judge  
19 Goldsmith has -- because of this very proceeding, has stayed  
20 everything against Canton.

21 Q I don't believe that's correct, but we can talk about  
22 that outside of court. And the docket can speak for itself,  
23 and the Court can access the docket in that matter, but  
24 assume that it goes to trial fairly promptly and Canton does  
25 not appeal. That being the case, there will be numerous

1 witnesses from the City of Detroit who will be or could be  
2 called as witnesses in that matter; isn't that right?

3 A I don't know. I would have to consult our bankruptcy  
4 counsel as to whether or not the stay would preclude them  
5 from being subpoenaed in that trial. However, that would be  
6 of no moment.

7 THE COURT: Let me consult with you. The answer is  
8 no.

9 THE WITNESS: Oh, okay.

10 BY MR. GOODMAN:

11 Q But you, in fact, have told me until we've just heard the  
12 definitive ruling on this point that there was some question  
13 until just now; isn't that right?

14 A Well, yeah. I can't not consult with our bankruptcy  
15 counsel. I mean I told you that that was the question. But  
16 in any event, even if they couldn't be there live, you, of  
17 course, have their depositions, which can be used when  
18 they're not available.

19 Q But it sounds as though they may be there live, and if  
20 they are there live, you will be representing them in that  
21 proceeding; isn't that right?

22 A Certainly I'll be there, yeah.

23 Q And if the matter is appealed to the Sixth Circuit  
24 immediately by Canton or, in fact, by Detroit if Detroit --  
25 if the stay were to be lifted and Detroit were to get into

1 the case and -- back into the case and your motion were to be  
2 ruled upon, you might engage in interlocutory appeal as well;  
3 isn't that right?

4 A Not might, absolutely 100 percent would.

5 Q I will remember that. That being the case, it may well  
6 be that there will -- we'll be one step closer to a  
7 resolution of this matter either through Judge Goldsmith's  
8 rulings or through rulings from Cincinnati; isn't that right?

9 A Before the discharge takes place in this case? We'll be  
10 sitting in the Sixth Circuit.

11 Q Okay. And one step closer --

12 A That's 18 months.

13 Q One step closer to resolution or at least clarification;  
14 correct?

15 A Not really. I mean from my perspective, Mr. Goodman, if  
16 it was remanded for trial, then we would undertake a trial in  
17 18 months. If it's not remanded for trial, then we would  
18 prevail.

19 Q Yeah.

20 A So I guess in a sense you're right. It would be one step  
21 closer to resolution.

22 Q Just one moment. Other than this case, how many other  
23 1983 cases do you have at the moment?

24 THE COURT: You mean the witness personally?

25 MR. GOODMAN: Yes.

1 THE WITNESS: That I'm defending?

2 BY MR. GOODMAN:

3 Q Yeah, that you're the attorney for.

4 A The vast majority of my caseload, due to necessity,  
5 switched from commercial to police. Police are unique cases,  
6 and almost every one of them is a 1983 case.

7 Q How many is that?

8 A I don't know. Mr. Keelean had the count. He said  
9 somewhere around 30, 35.

10 Q And those are all 1983 cases?

11 A Yes, they are.

12 Q Okay. So you're quite a specialist or expert in that  
13 field.

14 THE COURT: Would you stand by the microphone,  
15 please?

16 MR. GOODMAN: I apologize, your Honor.

17 BY MR. GOODMAN:

18 Q So you are quite an expert or a specialist in that field.  
19 I'll say so.

20 A Well, I know the law in that area. I don't know that I  
21 would refer to myself as a specialist.

22 MR. GOODMAN: Thank you.

23 THE COURT: Sir, you may step down.

24 (Witness excused at 10:15 a.m.)

25 THE COURT: Any further witnesses by either side?



1 MR. CARLSON: None from the city, your Honor.

2 MR. GOODMAN: We have none.

3 THE COURT: All right. Closing, please.

4 MR. CARLSON: Thank you, your Honor.

5 CLOSING ARGUMENT

6 MR. CARLSON: We're here on one motion on one case  
7 for relief from stay for one plaintiff. As you heard from  
8 Mr. Keelean, that is one of many that are pending and were  
9 pending on the day that this case was filed. You also heard  
10 from Mr. Keelean that prior to the filing, the bankruptcy  
11 department was in overload and was becoming increasingly  
12 reliant upon outside counsel at a significant cost. You also  
13 heard from Mr. Keelean that this automatic stay has given the  
14 city some breathing room to allocate resources in other  
15 directions necessary to accomplish the activities required to  
16 run this bankruptcy and hopefully move this bankruptcy  
17 towards resolution and a plan of adjustment that makes sense  
18 and in that light also evaluate cases, move them toward some  
19 understanding that will help in the overall claims resolution  
20 process that has yet to be developed or proposed or approved  
21 by this Court but presumably will be done shortly, as  
22 testified in the original hearing in this case or as  
23 represented by Jones Day in this case.

24 You've also heard that, contrary to the assumption  
25 or the allegation that the attorneys in the City of Detroit

1 were sitting around doing nothing, they are, indeed, doing  
2 things and are busy at some level. The automatic stay, did  
3 it slow down their workload? Absolutely. That's what it's  
4 for. And, your Honor, the attorneys' workload may increase,  
5 likely will once the claims resolution process is  
6 established, whether it be mediation, whether it be some sort  
7 of other liquidating procedures.

8           So the point is, your Honor, would this one case  
9 cause a hardship? Would this one case create Mr. Muller's  
10 workload to expand exponentially? No. That's not the point.  
11 The point is where does it end? Is it a race to the  
12 courthouse? Whoever gets here first gets to go. That's the  
13 issue. That's the point. And that's why the city says at  
14 this early stage in this proceeding, relief from stay is not  
15 warranted. Will it be in the future? Maybe, but we should  
16 resolve eligibility, at a minimum. We should also resolve  
17 some level of a claims resolution process so we know where  
18 we're going with all the cases and all the claimants can be  
19 treated fairly.

20   CLOSING ARGUMENT

21           MS. PATEK: Your Honor, the Detroit Police  
22 Lieutenants & Sergeants Association and the Police Command  
23 Officers Association, two of the unions that recommend -- or  
24 represent the public safety officers in the City of Detroit,  
25 have -- are opposing this motion, and we have a very

1 significant concern. And our focus -- and if I can refer to  
2 the Court's order of October 2nd -- is on item five, the cost  
3 of defense or other potential burden to the bankruptcy  
4 estate and the impact of the litigation on other creditors.  
5 As the Court is aware, we are currently engaged in a  
6 mediation process with the City of Detroit; that it's in --  
7 it is in its early stages. Among the issues that we are  
8 dealing with is the global resolution of grievances and terms  
9 of a collective bargaining agreement. This stay issue has  
10 become a recurring theme. We have come to an agreement with  
11 the city and have recently filed a motion to, in fact, extend  
12 the extended stay to former employees who have rights under  
13 those agreement to have their defense from the city and who  
14 need to be protected by the stay if that defense obligation  
15 is not going to be triggered.

16 Our concern if the stay is lifted here is that the  
17 city, one, would continue to provide a defense to these  
18 officers, but more concerning to the public safety unions is  
19 the concept that if there were, in fact, a judgment -- and we  
20 heard testimony here today that the city is really not ready  
21 to go forward with its claims adjustment process -- that  
22 these individual officers could be exposed potentially to a  
23 significant judgment with no right of stay and with their  
24 right of indemnification as to the city being stayed or  
25 potentially, worst case scenario, you've got a very large

1 judgment and you've got a proof of claim in the Bankruptcy  
2 Court of some classification for Sergeant Kozloff and  
3 Inspector Blackmon. I would suggest to the Court that that  
4 would be a disastrous result.

5 We are opposing lifting the stay in its entirety.  
6 In the event that the Court decides to lift the stay for the  
7 purpose of liquidating the claim, we would request that the  
8 order be specific as to the individual officer. Any effort  
9 to execute or take any post-judgment action, which is what  
10 the original motion asked for, would also be stayed as to  
11 these individuals.

12 THE COURT: Thank you.

13 CLOSING ARGUMENT

14 MR. GOODMAN: Your Honor, we have heard testimony  
15 and argument along the lines of a global picture within the  
16 City of Detroit Law Department with regard to some concern  
17 about a floodgate problem, if this stay -- stay is lifted in  
18 this case, why not all other cases -- similar cases, although  
19 the uniqueness of this case has also been noted and testified  
20 to on the record. And we have heard about how the law  
21 department is using the breathing room, which it has received  
22 as a result of the filing, but the specifics of that, I  
23 think, have been unclear. Mr. Muller testified that he  
24 fields telephone calls from plaintiffs' attorneys who want to  
25 know what's going on with their case. Mr. Keelean testified

1 that he gets a call every day from Sam Bernstein. All of  
2 these things, it seems to me, are relatively trivial within  
3 the context of a full-time legal practice and certainly  
4 within the context of the seriousness of the case involving  
5 Ms. Ryan and her family. And, therefore, I think that the  
6 terms -- I apologize for having said that the law department  
7 has nothing to do. Obviously these are people who are  
8 professional and who use their time productively I'm sure.  
9 However, the terms "breathing room" and "getting their arms  
10 around things" it seems to me is really a way of  
11 characterizing the fact that there is a considerable amount  
12 of time that could be used productively in litigating a case  
13 such as this, in fact, in particular, in this case, and that  
14 if this case does go to trial as to Canton only and the  
15 Canton defendants only, the law department is going to be  
16 very involved in defending its witnesses in that matter, who  
17 may or may not become agents of the defendant, City of  
18 Detroit, or actually defendants in some subsequent litigation  
19 either here or elsewhere.

20 That being the case, it seems to me -- or I would  
21 urge the Court to consider granting the stay. Consider the  
22 constitutional context, which was pointed out previously, and  
23 I appreciate the Court's time and patience. Thank you.

24 THE COURT: Thank you. Mr. Carlson, anything  
25 further?

1 MR. CARLSON: No, your Honor.

2 THE COURT: The Court will take this matter under  
3 advisement and come back into court and give you a decision.  
4 Let's just say 11 o'clock.

5 MR. GOODMAN: Thank you.

6 THE CLERK: All rise. Court is in recess.

7 (Recess at 10:24 a.m., until 11:11 a.m.)

8 THE CLERK: Court is in session. Please be seated.  
9 Recalling Case Number 13-53846, City of Detroit, Michigan.

10 THE COURT: The record should reflect that all  
11 counsel are present. The matter before the Court is a motion  
12 for relief from stay filed on behalf of Ms. Ryan. She seeks  
13 relief from the stay so that she can continue to pursue her  
14 constitutional and tort claims against the City of Detroit  
15 that have been filed in the District Court for this district.

16 The standard for relief from the stay is whether  
17 there is cause for relief from the stay. The matter is  
18 obviously addressed to the discretion of the Court. In  
19 determining whether there is cause for relief from the stay,  
20 the Court must weigh and balance the interests of the  
21 parties, the interests of the movant, who is the plaintiff,  
22 in pursuing her personal injury claim and in recovering on  
23 it, to the extent the law allows, as promptly as possible,  
24 and, of course, on the other side the Court must weigh and  
25 balance the interests of the city in having an opportunity to

1 reorganize and in that process of reorganizing liquidating  
2 all of the claims against it, not just those of Ms. Ryan, in  
3 as efficient a way as possible.

4 The city's interest in efficiency here is, of  
5 course, shared by all of the creditors, including Ms. Ryan,  
6 because there are only limited resources available, and the  
7 more money that's spent on liquidating claims, the less money  
8 is available to pay on those claims in the end.

9 So the Court must conclude that in determining this  
10 issue of cause in this case, it really is inappropriate to  
11 consider the cases on a case-by-case basis, and it is only  
12 appropriate to consider the issue of cause in the context of  
13 the entire case and perhaps more particularly in the context  
14 of all of the tort claims that the city faces.

15 After weighing and balancing these, the Court  
16 concludes that a conditional granting of the motion is  
17 appropriate, the condition being that the motion is granted  
18 unless the city files a motion to establish an efficient  
19 process for liquidating all of the tort claims by a deadline  
20 the Court will set. Then the motion for relief from stay  
21 filed by Ms. Ryan is granted, and she may proceed with her  
22 claims.

23 In setting this deadline, the Court must express a  
24 couple of points to the city. First, it was clear enough  
25 from the testimony of the witnesses, whose credibility this

1 Court has no reason to doubt, that neither counsel for the  
2 city nor management of the city has yet spent any time  
3 focusing on this very issue of what should the process be to  
4 liquidate these claims or at least if any time has been spent  
5 on this issue, that certainly did not come through the  
6 testimony that was presented here today. Certainly if the  
7 witnesses had been consulted about such a process, they would  
8 have so testified, and they should be consulted because they,  
9 likely more than Jones Day, are the ones who have the  
10 expertise in these cases. And here I will acknowledge  
11 Mr. Muller as an expert despite his protestations to the  
12 contrary.

13           So I'm going to allow the city 35 days within which  
14 to file this motion subject to an extension upon a motion  
15 establishing good cause, and if such an extension is  
16 requested alleging good cause, the Court will expect a full  
17 showing of what efforts the city has made in the meantime to  
18 come up with such a plan, including what efforts it has made  
19 to consult with the attorneys in the city law department who  
20 deal with these cases day-in and day-out.

21           I leave it to the city in its discretion to propose  
22 the plan that it determines is in the best interest of the  
23 city and of the tort claimants that it has to deal with. The  
24 motion, when it's filed, should be noticed out to all of the  
25 attorneys in all of the tort claims cases so that they have



1 an opportunity to be heard regarding the process and an  
2 opportunity to object. One such process which this Court  
3 suggested to the city previously and which the Court would  
4 again ask the city to consider would involve the appointment  
5 of a tort claims committee whose fiduciary obligation would  
6 be in representing the interests of all tort claimants in the  
7 case to come up with and work with the city on coming up with  
8 a process through negotiation and then also equally  
9 importantly, if not more importantly, negotiating with the  
10 city on how tort claims would be dealt with in a plan of  
11 adjustment, but it's not for me to dictate that. I do not  
12 intend to dictate that. It's just a suggestion. There are  
13 an infinite variety of potential plans for liquidating tort  
14 claims that the city could come up with.

15 That's all I've got. I will enter an order to this  
16 effect promptly. Anything further?

17 MR. CARLSON: Not from the city, your Honor.

18 MR. GOODMAN: Your Honor, just one question, which  
19 is, as I understand your order, you are lifting the stay now  
20 subject to the condition --

21 THE COURT: No, no, no. That's not how this works.  
22 The stay will remain in effect for 35 days. If the city  
23 files the motion that I have indicated it is required to  
24 file, then the stay will remain in effect pending the Court's  
25 determination of the motion because presumably the motion

1 will result in some process for the liquidation of your  
2 client's claim. If they don't file, then the stay is lifted  
3 as of the 36th day.

4 MR. GOODMAN: Thank you.

5 THE COURT: All right. We'll be in recess.

6 THE CLERK: All rise. Court is adjourned.

7 (Proceedings concluded at 11:21 a.m.)

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I certify that the foregoing is a correct transcript from the sound recording of the proceedings in the above-entitled matter.

/s/ Lois Garrett

October 12, 2013

\_\_\_\_\_  
Lois Garrett